United Nations A/HRC/25/23

General Assembly

Distr.: General
24 February 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promoting reconciliation and accountability in Sri Lanka

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

In the present report, the Office of the United Nations High Commissioner for Human Rights acknowledges the progress made in reconstruction and the implementation of some of the recommendations made by the Lessons Learnt and Reconciliation Commission. The Government of Sri Lanka has, however, failed to ensure independent and credible investigations into past violations of international human rights and humanitarian law. The report also contains updates on the ongoing attacks on religious minorities, and the harassment and intimidation of human rights defenders, lawyers and journalists.

The Government has not responded to the offers of technical assistance made by the High Commissioner and the special procedures. Meanwhile, new evidence continues to emerge on the events that took place in the final stages of the armed conflict. Against this background, the High Commissioner recommends the establishment of an independent, international inquiry mechanism, which would contribute to establishing the truth where domestic inquiry mechanisms have failed.

* Late submission.

GE.14-11202

1411202

Please recycle

Contents

		Paragraphs	*Page*
I.	Introduction	1–2	3
II.	Engagement of the Office of the High Commissioner and the special procedures	3–11	3
III.	Recent human rights developments	12–26	5
	A. Former combatants and detainees	16–19	6
	B. Attacks on religious minorities, human rights defenders and freedom of opinion and expression	20–22	6
	C. Extrajudicial, summary and arbitrary killings	23–24	7
	D. Mass graves	25–26	8
IV.	Implementation of the recommendations of the Lessons Learnt and Reconciliation Commission	27–35	8
V.	Progress in accountability issues	36–64	10
	A. Domestic initiatives	36–46	10
	B. Emblematic cases	47–64	12
VI.	Conclusions and recommendations	65–75	16
	A. Conclusions	65–73	16
	B. Recommendations	74-75	18

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 22/1, in which the Council encouraged the Government of Sri Lanka to implement the constructive recommendations of the Lessons Learnt and Reconciliation Commission,[1] as well as those made by the United Nations High Commissioner for Human Rights in her report,[2] and to conduct an independent and credible investigation into allegations of violations of international human rights and humanitarian law.[3]

2. In resolution 22/1, the Human Rights Council also encouraged the Government of Sri Lanka to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans, and to cooperate with the special procedures. It also encouraged the Office of the High Commissioner (OHCHR) and relevant special procedures mandate holders to provide advice and technical assistance on implementing the above-mentioned steps. Lastly, the Council requested OHCHR to present a comprehensive report on the implementation of the resolution at its twenty-fifth session, with input from relevant special procedures.

II. Engagement of the Office of the High Commissioner and the special procedures

3. At the invitation of the Government, the High Commissioner visited Sri Lanka from 25 to 31 August 2013. In accordance with the request made by the Human Rights Council in resolution 21/1, she presented an oral update on the situation to the Council at its twenty-fourth session (A/HRC/24/CRP.3/Rev.1), in which she suggested concrete steps that the Government could take that could help the Council to assess progress made in the areas identified by the Council in resolution 22/1 by the time of its twenty-fifth session. These included inviting the Working Group on Enforced or Involuntary Disappearances and the Independent Expert on minority issues; demonstrating a credible national investigation process with tangible results, including the successful prosecution of individual perpetrators; and setting a clear timeline for disengagement of the military from activities that are meant to be civilian. Regrettably, none of these steps had been taken by the end of the period of review.

4. The Government of Sri Lanka did not respond positively to the offer of technical assistance made by the High Commissioner following an OHCHR technical mission to Sri Lanka in November 2012. On 31 October 2013, following her visit to Sri Lanka, the High Commissioner again addressed a letter to the Minister for External Affairs and other officials in which she reiterated the readiness of her Office to provide technical assistance. The areas of possible assistance highlighted by the High Commissioner were in line with

---

[1] The Commission was appointed in May 2010 by the President of Sri Lanka to investigate the facts and circumstances that led to the failure of the 2002 ceasefire agreement, the lessons to be learned from those events, and to suggest institutional, administrative and legislative measures to prevent any recurrence of such events, and to promote national unity and reconciliation among all communities. The report of the Commission is available from www.llrcaction.gov.lk/reports/en/Final_LLRC_Report_en.pdf.

[2] A/HRC/22/38.

[3] For the comments of the Government of Sri Lanka on the draft version of the present report, see A/HRC/25/G/5.

some of the recommendations accepted by the Government during its universal periodic review and with those made by the Secretary-General's Panel of Experts on Accountability in Sri Lanka.[4] The High Commissioner regrets that she has received no response.

5. With regard to the issue of disappearances, the High Commissioner urged the Government to invite the Working Group on Enforced or Involuntary Disappearances, to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and to finalize measures to criminalize disappearances in national law.

6. With regard to criminal justice and accountability, the High Commissioner offered technical assistance in various areas, including draft legislation on hate speech and witness and victim protection, to ensure compliance with relevant international standards. In relation to some long outstanding criminal investigations, the High Commissioner offered to identify international experts who could assist the national inquiries.

7. Furthermore, the High Commissioner offered to provide technical advice on how truth-seeking mechanisms and reparations policies could be developed in accordance with international standards.

8. On 17 December 2013, the Assistant Secretary-General for Human Rights met with the Secretary of Defence of Sri Lanka, in New York, and reiterated the High Commissioner's offer of technical cooperation. Subsequently, on 20 January 2014, the High Commissioner met with the Secretary to the President, Lalith Weerathunga, in Geneva.

9. There are currently nine outstanding requests to visit Sri Lanka by special procedures: on minority issues; freedom of peaceful assembly and of association; freedom of opinion and expression; extrajudicial, summary or arbitrary executions; enforced or involuntary disappearances; human rights defenders; independence of judges and lawyers; discrimination against women in law and practice; and truth, justice, reparation and guarantees of non-recurrence. In October 2013, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the rights to freedom of peaceful assembly and of association followed up on their requests to visit or made specific offers of technical assistance. These requests remain pending. Since January 2012, the Government has transmitted responses on 842 cases to the Working Group dating back to the 1990s.

10. At the invitation of the Government, the Special Rapporteur on the rights of internally displaced persons visited Sri Lanka from 2 to 6 December 2013 (see also para. 14 below). In August 2013, the Special Rapporteur on the right to education received an invitation from the Government, but had to defer his visit owing to conflicting engagements. The Government has since extended an invitation to the Special Rapporteur on the human rights of migrants to visit the country in May 2014.

11. The High Commissioner welcomes the Government's engagement in these important issues, but reiterates her calls to invite the special procedures on enforced or involuntary disappearances and minority issues as a matter of priority, considering that these issues featured prominently in the recommendations made by the Lessons Learnt and Reconciliation Commission and have also been identified by the Human Rights Council as key concerns.

[4] See www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

III. Recent human rights developments

12. In her oral update to the Human Rights Council at its twenty-fourth session, the High Commissioner acknowledged the achievements made by the Government, with the help of the international community, in demining, resettlement, reconstruction and rehabilitation since 2009. She welcomed the elections to the Northern Provincial Council in September 2013, and recommended that the Government should work with new provincial authorities to promote meaningful community participation in reconstruction and development programmes. She however also highlighted pressing concerns, including the lack of progress in accountability for serious human rights violations; the situation of detainees and former combatants, with regard to extrajudicial, summary and arbitrary killings; continued militarization[5] and compulsory land acquisition[6] (particularly in the north and east of the country); shrinking space for civil society and the media; rising religious intolerance; and the undermining of independent institutions, including the judiciary.

13. Following his visit in December 2013, the Special Rapporteur on the human rights of internally displaced persons also acknowledged the reconstruction effort, but emphasized the need to promote durable solutions and to address the protection of women and girls, access to land, and the withdrawal of the military from all civilian functions.[7]

14. In its comments on a draft version of the present report, the Government of Sri Lanka stated that, since 2009, the total strength of the military had been reduced by approximately 30 per cent in the Northern Province, and by 26 per cent in the Eastern Province, and the vast majority of checkpoints had been removed. It added that a total of 20,011 acres of private land and 5,740 acres of State land had been released in the two provinces. The High Commissioner noted, however, reports that more than 6,000 acres of private land had been acquired by the State in Jaffna around the Palaly cantonement, and that more than 2,000 petitioners had taken legal action to reclaim their land.[8] The Government stated that steps were being taken to compensate the owners.

15. The High Commissioner remains concerned that non-governmental organizations are still required to register and report through a secretariat under the Ministry of Defence. She also draws attention to concerns that women are vulnerable to sexual harassment and violence when there is a heavy military presence.[9] For instance, in May 2013, a soldier attached to an army camp in Nedunkerny reportedly confessed to raping a 6-year-old child. In its comments on the present report, the Government reported that the military had taken strict action in such cases.

---

[5] See Office of the United Nations High Commissioner for Refugees (UNHCR), A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating ("Tool Three"), June 2013 (available from http://unhcr.lk/wp-content/uploads/2014/01/Tool-Three-Final-Report-July-12-2013.pdf)figures 1.5, 1.6. & 1.7.

[6] See case studies on Jaffna, Sampur and Weli Oya in Centre for Policy Alternatives, Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, November 2013, available from www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/.

[7] See the press release of the Special Rapporteur on the human rights of internally displaced persons after his visit to Sri Lanka from 2 to 6 December 2013, atwww.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14086&LangID=E.

[8] See Centre for Policy Alternatives, Politics, Policies and Practices with Land Acquisitions and Related Issues (see footnote 6), p. 45.

[9] See UNHCR, A Protection Assessment of Sri Lankan Internally Displaced Persons (see footnote 5), figures 1.14, 1.15, 1.16 and 1.17.

A. Former combatants and detainees

16. During the visit of the High Commissioner, the Government informed her that more than 11,758 former combatants had been rehabilitated and reintegrated into society, 234 detainees were undergoing rehabilitation, and 91 detainees were facing legal proceedings. The Government also reported that the files of 977 detainees who had been held for long periods of time without charge had been opened, and that 160 files were pending a decision by the end of January 2014.[10]

17. The High Commissioner welcomes such progress and urges the Government to expedite decision-making on pending cases by bringing charges, releasing or sending individuals for rehabilitation, and to ensure that lawyers have access to their clients.

18. The High Commissioner again urges the Government to repeal the Prevention of Terrorism Act and the regulations promulgated under it, which allow for arbitrary detention.

19. The High Commissioner notes with appreciation the Government's report that all former child combatants had been reintegrated by May 2010 and been provided with formal education.[11] At the same time, she reminds the Government that, as highlighted in Lessons Learnt and Reconciliation Commission recommendation 9.79, there has yet to be any prosecutions or trials for the war crime of child recruitment, including against former cadres of the Liberation Tigers of Tamil Eelam (LTTE) and former paramilitary leaders now serving in the Government.

B. Attacks on religious minorities, human rights defenders and freedom of opinion and expression

20. The High Commissioner remains deeply disturbed by the significant surge in attacks against religious minorities and the incitement of violence by Sinhala Buddhist nationalist groups, led predominantly by certain extremist Buddhist monks. She received reports from the Secretariat for Muslims, a non-governmental organization, according to which there were some 280 incidents of threats and violence against Muslims in 2013,[12] as well as attacks on mosques and places of business. Christian groups also reported more than 103 incidents of attacks on churches and Christians in 2013. After a lull prior to the Commonwealth Heads of Government Meeting, five violent attacks led by Buddhist monks were reported against multiple churches in December 2013 and January 2014. In its comments on the present report, the Government cited 182 incidents affecting all religions, of which only 147 were reported to police. Although the Government stated that, the police had taken necessary action, in many cases perpetrators were readily identifiable in video footage, where police are seen standing as onlookers to the violence. The Government also reported that amending legislation to enhance existing provisions of the Penal Code and ICCPR Act with regard to hate speech had been prepared.

21. OHCHR continues to receive complaints of widespread harassment and intimidation targeting human rights defenders, activists, lawyers and journalists, including reprisals against those who engage with the United Nations human rights mechanisms and OHCHR. The High Commissioner expressed grave concern at the harassment and intimidation

[10] See the National Plan of Action for the Implementation of LLRC Recommendations (available from www.llrcaction.gov.lk/npoa.html), IR (1a), p. 7.

[11] Ibid., p. 11.

[12] Statistics provided by the Secretariat for Muslims.

against individuals or groups who met or attempted to meet with her, even months after her visit. OHCHR received reports of at least 10 serious cases involving targeting individuals and groups between the end of October and November 2013 in the run-up to and during the Commonwealth Heads of Government Meeting hosted by Sri Lanka. These included the case of a prominent human rights defender who, on 4 November, was the target of threats and derogatory remarks during a radio broadcast hosted by the State-owned Sri Lankan Broadcasting Corporation. In another instance, on 13 November, the police blocked buses carrying members of families of the disappeared as they were travelling to Colombo to participate in a human rights event and in a demonstration calling for accountability for enforced disappearances.

22. Attacks against journalist and media outlets continued in 2013. Several incidents targeted the Tamil newspaper *Uthayan*: on 10 January, two distributers were attacked and copies of newspapers burned; on 13 April, armed men attacked employees and set fire to printing machines in the Jaffna office; and, on 11 July, armed men attacked the newsroom. On 24 August, an associate editor of the *Sunday Leader* was attacked by masked men at her home, and her computer was stolen in a subsequent break-in, on 8 September.

C. Extrajudicial, summary and arbitrary killings

23. The High Commissioner and several special procedures mandate holders continued to follow developments in recent cases in which the apparent excessive use of force led to the death of unarmed protesters or of prison inmates. On 1 August 2013, approximately 6,000 residents of Weliweriya, a small suburb of Colombo, protested against the State's failure to address community concerns about the contamination of their drinking water supply by a local factory. Army personnel were deployed in support of the police to control the protest, which had turned violent and reportedly used excessive force, leaving three people dead and many others with critical injuries.[13] On 2 August 2013, the Army Commander appointed a military court of inquiry into the incident. The court submitted its report on 21 August, but it has not been made public. On 30 August 2013, the Army announced that four senior officers had been relieved of their duties with immediate effect, although no court martial has been initiated.[14] The factory has since been relocated and compensation offered to the families of those killed.

24. On 12 November 2012, the Ministry of Rehabilitation and Prison Reforms appointed a committee to inquire into events in Welikada prison on 9 November 2012, when Special Task Force personnel conducted a search operation and army personnel subsequently intervened to control a riot; at least 27 inmates were killed and 43 injured.[15] The committee handed over its report to the Ministry of Rehabilitation and Prison Reforms on 15 January 2014, but it has not been published. According to media reports, it concludes that the prisoners shot each other. The Government informed the High Commissioner that a similar inquiry had been carried out into custodial deaths when security forces had stormed

[13] See Human Rights Watch. "Sri Lanka: Investigate 'Clean Water' Protest Deaths", 9 August 2013, available from www.hrw.org/news/2013/08/09/sri-lanka-investigate-clean-water-protest-deaths; and Ministry of Defence and Urban Development, press communiqué, 30 August 2013, available from www.defence.lk/new.asp?fname=Press_Communique_Weliweriya_Incident_20130830_03.

[14] See Ministry of Defence press communiqué (see footnote 13).

[15] Centre for Policy Alternatives, "A List of Commissions of Inquiry and Committees Appointed by the Government of Sri Lanka (2006-2012)", 12 March 2012, available from www.cpalanka.org/a-list-of-commissions-of-inquiry-and-committees-appointed-by-the-government-of-sri-lanka-2006-2012/.

Vavuniya prison to free officials taken hostage by prisoners in June 2012, which was highlighted in her previous report,[16] but to date no report has been made public.

D. Mass graves

25. On 26 November 2012, a mass grave with approximately 155 skeletal remains was uncovered in Matale, central Sri Lanka. In June 2013, a presidential commission of inquiry was appointed to probe the circumstances surrounding the gravesite, despite the initiation of a judicial process in the Matale Magistrate's Court. There are concerns regarding the manner in which the remains are being preserved, the protection of the site and the investigation process.[17] In December 2013, it was reported that another gravesite with 52 skeletal remains, including of children, was discovered in Mannar, northern Sri Lanka.

26. It is vital that the integrity of the sites, and exhumation and identification procedures, be given due attention. The rights of families to know the fate of their missing loved ones is critical, and they must be actively involved in the legal and humanitarian efforts to locate, exhume, rebury and memorialize the dead. In this context, an uncompromised exhumation and investigation process is essential, and could benefit from international assistance.

IV. Implementation of the recommendations of the Lessons Learnt and Reconciliation Commission

27. In May 2012, the Cabinet appointed a presidential task force to monitor the implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission. In July 2012, the task force issued a national plan of action for the implementation of some of the recommendations. The Government released its latest update on the implementation of the plan of action in January 2014.[18] The High Commissioner had the opportunity to discuss progress with the Secretary to the President on 20 January 2014.

28. The High Commissioner welcomes the progress reported in implementing a number of recommendations made by the Lessons Learnt and Reconciliation Commission, for instance giving effect to the trilingual policy, promoting the official use of the Tamil language, the upgrading of schools in the northern and eastern provinces, and measures to promote ethnic diversity in schools and equity of access to higher education.

29. Noting the breadth and depth of the full range of recommendations made by the Lessons Learnt and Reconciliation Commission, the High Commissioner has questioned the process and rationale for the Government's selectivity in implementing only some of the recommendations. In some instances, as discussed below, she also observed that certain recommendations had been watered down in the national plan of action or during various stages of implementation.

30. The Lessons Learnt and Reconciliation Commission made approximately 285 recommendations. In the national plan of action, the Government pledged to support the implementation of 92 recommendations. In August 2013, it announced that it would

[16] A/HRC/22/38, para. 21.

[17] For instance, the Matale magistrate overseeing the inquiry was subsequently transferred – according to the Government, on disciplinary grounds – to Colombo.

[18] Available from www.llrcaction.gov.lk/npoa.html.

implement an additional 53 recommendations,[19] bringing the total to 145 recommendations. At the universal periodic review of Sri Lanka in November 2012, the Government stated that some of the remaining Commission recommendations fell under the ambit and scope of the national plan of action for the protection and promotion of human rights (2011-2016), progress reports on which are not available in the public domain.

31. In many instances, however, the specified activity in the national plan of action does not fully correspond to or address the recommendations made by the Lessons Learnt and Reconciliation Commission, or the activity has been only partially completed. For instance, while recommendation 9.73 calls for the investigation of allegations against illegal armed groups, the corresponding activity is the disarming of armed groups.[20]

32. In other examples, recommendation 9.46 called upon the Government to direct law enforcement authorities to take immediate steps to ensure that allegations of abductions, enforced disappearances and arbitrary detention are properly investigated and perpetrators brought to justice. The corresponding activity identified by the Government does not respond to the call for investigations, but focuses on the capacity-building of police and community policing.[21] Recommendation 9.270 called for the establishment of interfaith mechanisms to facilitate early warning and prevention of communal or religious violence, but this is being implemented by civil defence committees established by the Ministry of Defence during the war.[22]

33. Little progress has been made with other key recommendations relating to justice and accountability issues, a core concern for the Human Rights Council; for instance, recommendation 9.120 urged the Government to implement the recommendations of the report of the presidential commission of inquiry (the Udalagama Commission) appointed in 2006 to investigate alleged serious violations of human rights committed since August 2005,[23] particularly the killing of five students in Trincomalee, in January 2006, and of 17 aid workers of Action contre la Faim, in August 2006. Limited progress has been reported under the national plan of action on these two cases (see paras. 47 – 64 below); furthermore, the plan does not address any of the other 13 high-profile cases investigated by the Udalagama Commission, including the murder of a former Minister for Foreign Affairs and of other parliamentarians, and the disappearance of a Catholic priest.

34. Recommendation 9.213 called upon the Government to investigate the serious allegations against illegal armed groups (some of which had operated as paramilitaries), and to prosecute and punish perpetrators irrespective of their political links. In the national plan of action, the Government reported that, as at January 2014, 76 suspects were being detained by the Terrorist Investigation Division, and that an investigation concerning some of them was ongoing.[24]

35. While the paramilitary groups have largely been disbanded, no action has been taken to date in relation to two senior paramilitary leaders now serving in ministerial positions, Douglas Devananda and Vinayagamoorthy Muralitharan (alias Karuna), or the former

---

[19] See the press release of the Presidential Secretariat of Sri Lanka, 15 July 2013, at www.presidentsoffice.gov.lk/index.php?option=com_k2&view=item&id=120:cabinet-approves-action-on-53-more-llrc-recommendations.

[20] Other examples include recommendations 9.57 and 9.81.

[21] There are similar issues with recommendations 9.73, 9.285 and 9.213.

[22] The Government announced the reactivation of civil defence committees in August 2011; see www.defence.lk/new.asp?fname=20110824_01.

[23] See Centre for Policy Alternatives, "A List of Commissions of Inquiry and Committees" (see footnote 15).

[24] See National Plan of Action (see footnote 10), p. 30.

Chief Minister of the Eastern Province, Sivanesat'hurai Chandrakanthan (alias Pillaiyan), all of whom are linked to numerous allegations of serious crimes during the armed conflict.[25] Both Karuna and Pillaiyan were former LTTE commanders who subsequently formed the breakaway Karuna faction named in the Lessons Learnt and Reconciliation Commission as well as successive reports of the Secretary-General on children and armed conflict as being responsible for child recruitment, a war crime.[26]

V. Progress in accountability issues

A. Domestic initiatives

36. In its resolution 22/1, the Human Rights Council called upon the Government to conduct an independent and credible investigation into allegations of violations of international human rights and humanitarian law and to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans. A number of the recommendations made by the Lessons Learnt and Reconciliation Commission also called for further investigation into specific cases and issues, in particular allegations of the indiscriminate killing of civilians and the summary execution of prisoners. To date, the Government has taken limited and piecemeal steps towards investigating serious allegations of violations of international human rights and humanitarian law, and none of these have had the independence or credibility required.

37. The Lessons Learnt and Reconciliation Commission recommended further investigations into, inter alia, the circumstances under which specific instances of death or injury to civilians could have occurred, and, that, if such investigations disclosed wrongful conduct, that perpetrators be prosecuted and punished, as well as into the Channel 4 video recordings to establish the truth of the allegations arising from them. The Commander of the Army convened a military court of inquiry in February 2012 to investigate and submit a report on the observations made by the Commission. Little, however, is known about the proceedings, as the court has been closed to the public and it has not issued any report.

38. In its update of the national plan of action of January 2014, the Government reported that the court of inquiry of the Sri Lanka Army completed in February 2013 its investigation into the allegation of killings of civilians, and concluded that instances of shelling referred to in the report of the Lessons Learnt and Reconciliation Commission had not been caused by the Army, and that civilian causalities might have been due to unlawful acts by the LTTE. The Government reported that the second part of the investigation into allegations made in the Channel 4 video was under way.

39. The High Commissioner has observed that military courts of inquiry do not have the necessary impartiality and independence to inspire confidence. The Commander of the Army who established the courts was also the commander of the security forces in the main battle zone of the conflict, and was actively engaged in the overall military planning and

[25] See Human Rights Watch, "Sri Lanka: Probe into LTTE Crimes Should Start with Karuna", 28 March 2013 (www.hrw.org/news/2013/03/28/sri-lanka-probe-ltte-crimes-should-start-karuna), and Amnesty International, Sri Lanka report, available from www.amnesty.org/en/region/sri-lanka/report-2010.

[26] S/AC.51/2007/9. See also Human Rights Watch, "Sri Lanka: Karuna Group Abducts Children for Combat", 25 January 2007, available from www.hrw.org/news/2007/01/23/sri-lanka-karuna-group-abducts-children-combat.

operations there. In cases of alleged human rights violations by the military or armed forces, investigations should be carried out by civilian authorities, not by the armed forces themselves.[27]

40. According to the Government, the Census on Human and Property Damages due to Conflict, completed in December 2013, will shed light on the number of civilian deaths and injuries during the war, as well as on the fate of missing persons. The results are reportedly being analysed. The outcome of the census will not, however, provide a total picture of all those who have died or disappeared since 1982; for instance, data were collected only from the immediate family members of those dead or missing, thereby missing those cases where all family members had died, disappeared or left the country.

41. Other issues for which the Lessons Learnt and Reconciliation Commission recommended further investigation remain unaddressed by the courts of inquiry or any other process. For instance, in paragraph 9.114 of its report, the Commission expressed deep concern at the persistent reports concerning the killing of journalists and other forms of attacks on journalists and media institutions, and the fact that these incidents still had to be conclusively investigated and perpetrators brought to justice.

42. The High Commissioner is also concerned that legal proceedings have not begun against any LTTE suspect for alleged war crimes or other human rights abuses.

43. In August 2013, the Government announced the appointment, by the President, of the new Commission of Inquiry on Disappearances. The Commission, which conducted its first public sittings from 18 to 21 January 2014, in Kilinochchi District, received approximately 13,700 complaints from all parts of the country.[28] The Government has also sought information from other countries concerning Sri Lankans who may now be abroad. The High Commissioner welcomes this effort, but notes that the Commission will only cover disappearances in the northern and eastern provinces between 1990 and 2009. Many disappearances reported in Colombo and other parts of the country in recent years will therefore not fall within its scope.

44. In November 2013, the Government announced that the Human Rights Commission of Sri Lanka would conduct a national inquiry into allegations of torture committed between 2009 and 2013, with the support of the Human Rights Division of the Commonwealth Secretariat. In early December 2013, the Commission announced that the inquiry had been postponed indefinitely.[29]

45. In her previous report,[30] the High Commissioner recommended that Sri Lanka should establish a more comprehensive truth-seeking mechanism, which would build upon the recommendations of the Lessons Learnt and Reconciliation Commission. It is important to stress that any truth-seeking mechanism must fully comply with the State's international legal obligations, and must be fully independent, including the selection of its members and

---

[27] See for example CCPR/C/79/Add.76, CCPR/CO/71/VEN, CCPR/CO/69/KGZ, CCPR/C/79/Add.104, CCPR/C/79/Add.86, para. 9, CCPR/C/79/Add.96, CCPR/C/79/Add.80, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40* (A/35/40), para. 249, and CAT/C/CR/31/1, para. 9 (d) (iii).

[28] Ministry of Defence and Urban Development, "Commission probing disappearances receives 13,700 complaints", 27 January 2014, available from www.defence.lk/new.asp?fname=Commission_probing_disappearances_receives_13700_complaints_20140127_07.

[29] Ramanathan Ahilan, "HRC Postpones Set Up Of Torture Commission On Alleged Requests By CSOs – Rights Now Asks Chairman To Name The Orgs", Rights Now, 14 December 2013, available from www.rightsnow.net/?p=4347.

[30] A/HRC/22/38.

budgetary considerations. It should enjoy the broadest possible mandate covering the entire period of the conflict and the whole territory. It should be based on a broad national consultation process, which should include the views of victims and survivors and of civil society organizations from all parts of the country. Lessons must be learned from the failure of past commissions of inquiry to ensure that any new mechanism enjoys the independence and powers necessary to be effective. For instance, any comprehensive truth mechanism should be established on a specific legislation meant for the mechanism, not under the currently flawed Commission of Inquiries Act.

46. The High Commissioner notes that it would not be permissible for any truth mechanism to grant amnesties that prevent the prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations. A truth commission should consider seeking international support, for example special technical, legal and policy assistance, as well as the involvement of international investigators to assist the process. Lastly, any such truth commissions should be complemented by comprehensive and coherent transitional justice mechanisms and processes that include prosecution, reparations, vetting and other accountability or reform programmes.

B. Emblematic cases

47. The failure of the Government to make any significant progress towards accountability is illustrated by the lack of independent and credible investigations into allegations of serious human rights violations in several emblematic cases. These cases have been repeatedly been drawn to the attention of the Human Rights Council by the High Commissioner and international human rights mechanisms. The Secretary-General's Panel of Experts highlighted in its report many of these cases (paras. 149, 170 and 414), which were investigated by previous national commissions of inquiry and for which the Lessons Learnt and Reconciliation Commission also recommended further investigations. In some cases, the Government has repeatedly reported to the Council that progress had been made in investigations. None of these cases has, however, resulted in the perpetrators being brought to justice. These cases are only a small but representative sample of the grave allegations of serious human rights violations committed by the Government and the LTTE during the conflict that have yet to be investigated or remain unresolved.

1. The Trincomalee five

48. On 2 January 2006, five students were allegedly beaten and executed by Sri Lankan security forces at the Trincomalee sea-front. The Trincomalee Magistrate's Court concluded in its inquest that the deaths had been due to gunshot injuries, and directed the police to conduct further investigations and to bring the suspects to court. A number of special task force members at the scene were detained as suspects soon after the incident, but released the same year. Since then, the magistrate in Trincomalee has postponed the case on a monthly basis, requesting the Criminal Investigation Division to produce reports of its investigations. The Division has failed to do so and has not provided justifiable reasons for the delay. Several witnesses and their family members fled the country after receiving threats.[31]

49. In 2006 and 2007, the Trincomalee case was investigated by the Udalagama Commission, which was observed by an international independent group of eminent

[31] See University Teachers for Human Rights (Jaffna), special report No. 30, 1 April 2008. Available from www.uthr.org/SpecialReports/Spreport30.htm.

persons. The Government has never published the Commission's report. The case was also investigated by the Human Rights Commission of Sri Lanka at the time; its report, which concluded that security forces had been involved, first appeared in the public domain in January 2014.[32] The Lessons Learnt and Reconciliation Commission had expressed dismay at the lack of follow-up to the findings of the Udalagama Commission, and recommended that the Government investigate the killings further.

50. In 2013, the Government informed the Human Rights Council that the Attorney-General had instructed the police to commence a non-summary inquiry before judicial authorities. At the time, the Government noted that the matter "may be brought to a conclusion and is concrete evidence of our commitment to accountability".[33]

51. In June 2013, 12 Special Task Force officers were arrested and remanded in connection with the murders. The Senior Superintendent of Police, who was in command at the time, was not among them (he has since been promoted to Deputy Inspector General and returned to Trincomalee). The Attorney-General informed the High Commissioner in August 2013 that the anticipated time frame for proceedings of this kind was three months, but pointed out the difficulties in convincing witnesses to come forward. The officers were released on bail in October 2013. On 20 January 2014, during a meeting with the Secretary to the President, the Attorney-General's Office informed the High Commissioner that evidence had been recorded from 14 witnesses, and affidavits examined from another seven. The Attorney-General's Office has summonsed a further 14 witnesses, although had had difficulties contacting those outside the country. After eight years of investigations, commissions of inquiry and repeated commitments by the Government, it is of great concern that this case has not been brought to a conclusion.

2. Action contre la Faim

52. On 4 August 2006, 17 aid workers from Action contre la Faim were executed at their office premises in Muttur, when the Government and LTTE were fighting for control of the town.[34]

53. An inquest into the killings began in the Muttur Magistrate's Court on 15 August 2006. In subsequent months, however, the case was transferred to Anuradhapura then to Kantale, and then back to Anuradhapura. In November 2007, the magistrate of Anuradhapura was transferred to another location and the case was sent back to the magistrate in Muttur (a different magistrate to the one who initially heard the case in August 2006), where it has since ground to a halt. Action contre la Faim lodged a complaint with the Human Rights Commission of Sri Lanka, later complaining of its total ineffectiveness and lack of cooperation.[35]

54. Credible and independent local and international organizations have conducted substantial inquiries into the case and made serious allegations about its mishandling by the

---

[32] Available from www.colombotelegraph.com/wp-content/uploads/2014/01/report-by-the-HRC-appointed-Special-Rapporteur.pdf.

[33] Statement by the leader of the Sri Lanka delegation, Mahinda Samarasinghe, at the high-level segment of the twenty-second session of the Human Rights Council, available from https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/22ndSession/OralStatements/Sri%20Lanka%20mtg%206.pdf.

[34] In its ruling addressed to the Sri Lankan Secretariat for Coordinating the Peace Process on 29 August 2006, the Sri Lanka Monitoring Mission concluded that the Army was in control of the town at the time of the death of the aid workers.

[35] Action contre la Faim, *The Muttur massacre: a struggle for justice*, study report, June 2008, available from www.actionagainsthunger.org/sites/default/files/publications/ACF-IN-Sri-Lanka-Advocacy-Report-6-18-08.pdf.

Attorney-General's Department, the police, the Judicial Medical Officer and the Ministry of Justice. They noted that officials had destroyed, removed and otherwise tampered with evidence. The families of the victims had been intimidated, threatened and, in some cases, encouraged to sign statements of withdrawal.[36]

55. The case was also among those investigated by the Udalagama Commission in 2007/08, although its report has never been published. The Lessons Learnt and Reconciliation Commission recommended that the Government should complete the investigation and prosecute those responsible. During the High Commissioner's visit to Sri Lanka, the Attorney-General informed her that he had instructed his staff to re-examine archived files, while pointing out that the investigation was proceeding slowly. In its comments on the present report, the Government stated that a team of senior prosecutors continued to pursue various lines of inquiry, although it has not been possible to establish the identity of those responsible.

3. Executions of prisoners and those who surrendered

56. Since the end of the armed conflict in 2009, video and photographic material have emerged depicting scenes from the last phase of the war, in which prisoners appear to have been killed upon their surrender or while in the custody of the security forces.

57. In June 2011, the Special Rapporteur on extrajudicial, summary or arbitrary executions presented a technical report to the Human Rights Council that demonstrated the authenticity of portions of the video footage first broadcast by Channel 4 in August 2009.[37] On 10 September 2009, the Government had announced the outcome of its own technical analysis on the basis of which it disputed the previous findings of the Special Rapporteur. In response, the Special Rapporteur commissioned independent experts to undertake a technical analysis, which confirmed his initial conclusion. While the Lessons Learnt and Reconciliation Commission did not reach a firm conclusion on the authenticity of the material, it recommended that the Government should conduct further investigations. According to the Government, this is now the subject of a second stage of proceedings by the military court of inquiry, yet to be concluded.[38]

(a) Balachandran Prabhakaran

58. In February 2013, a series of photographs emerged depicting Balachandran Prabhakaran, the 12-year-old son of LTTE leader Villupillai Prabhakaran, sitting in a bunker, alive and apparently in the custody of Sri Lankan troops, then his apparently dead body lying on the ground, his chest pierced by bullets. The photographs were taken in May 2009, a few hours apart and with the same camera. The authorities have maintained that the boy was killed in cross-fire.

(b) T. Thurairajasingham (alias Colonel Ramesh)

59. Video and photographic material obtained by Channel 4 and other sources depict LTTE commander Colonel Ramesh being interrogated by Sri Lankan security forces, followed by still images of his mutilated dead body. According to several witness testimonies to the events surrounding the face of Colonel Ramesh, he was in the custody of the security forces at the time of his death.

---

[36] See University Teachers for Human Rights, special report No. 33, 4 August 2009, available from http://uthr.org/SpecialReports/spreport33.htm#_Toc237059512.

[37] A/HRC/17/28/Add.1, appendix.

[38] See National Plan of Action (see footnote 10), p. 2.

(c) Shoba (alias Isaipriya)

60. The analysis by the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Channel 4 photographic and video material of the death of a high-profile member of the LTTE press and communications wing, Isaipriya, revealed the likelihood of summary execution by the army. The video and pictures showed that her clothing had been pulled away to reveal her bare body.[39] In November 2013, Channel 4 released new footage that shows her being captured alive by the army.

61. With regard to each of the above three cases, the Government stated the authenticity of the footage and photographs remained unsubstantiated and unverified. Whether this has been the subject of any further investigation is unknown.

(d) "White flag" incident

62. The Secretary-General's Panel of Experts examined allegations of extrajudicial executions of high-level LTTE leaders on 18 May 2009, despite assurances from the Government that they could safely surrender. High-ranking government and military officials have provided conflicting accounts of the events in rallies and international forums.[40] While the circumstances surrounding the incident remain uncertain, the Panel concluded that the LTTE leadership intended to surrender. Evidence of this incident continues to emerge through non-governmental sources from witnesses now located outside the country. In its report, the Lessons Learnt and Reconciliation Commission failed to critically analyse or investigate the "white flag" incident, but it cited testimonies from an army general and a government agent, who dismissed these allegations. In its comments on the present report, the Government stated that no further inquiries were being conducted into the incident owing to lack of credible evidence.

4. Prageeth Ekneligoda

63. On 24 January 2010, a Sri Lankan journalist and cartoonist, Prageeth Ekneligoda, disappeared shortly after leaving work. A few days earlier, he had published an article critical of President Rajapaksa. Local residents told the Sri Lankan press that they had seen a white van without numbered plates close to his house around the time of his disappearance. In August 2009, Prageeth had already been abducted, then released the following day, with his abductors saying that they had made a mistake. This case is emblematic of the tens of thousands of cases of disappearance witnessed over the past 30 years in Sri Lanka and remain unresolved. The Ekneligoda case has been raised by the High Commissioner, the Working Group on Enforced or Involuntary Disappearances, the Committee against Torture and the Secretary-General's Panel of Experts. While the Lessons Learnt and Reconciliation Commission did not investigate this case, it made general recommendations that the Government investigate abductions, enforced disappearances and attacks on journalists.

64. In June 2011, former Attorney-General (now Chief Justice) Mohan Peiris was ordered to appear at a habeas corpus hearing in the case after telling the Committee against Torture, in 2011, that Ekneligoda was living in a foreign country. At the hearing, Mohan Peiris admitted that he did not know Prageeth Ekneligoda's whereabouts and said that his

[39] See Amnesty International, Sri Lanka: Briefing to Committee against Torture, October 2011 (available from www.amnesty.org/en/library/asset/ASA37/016/2011/si/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf), p. 20.

[40] See Frederica Jansz, "'Gota ordered them to be shot'- General Sarath Fonseka", *Sunday Leader*, 12 December 2010, available from www.thesundayleader.lk/2009/12/13/%E2%80%9Cgota-ordered-them-to-be-shot%E2%80%9D-%E2%80%93-general-sarath-fonseka/.

statement to the Committee had been based on the instructions received. Ekneligoda's wife faced hostile questioning from State counsel over her activities at the Human Rights Council side event held in March 2012, in Geneva.[41] The Government has reported that a magisterial inquiry is in progress. This case, together with many of this kind, will not fall within the mandate of the new Commission of Inquiry on Disappearances, which is mandated to examine cases of disappearances only in the northern and eastern provinces.

VI. Conclusions and recommendations

A. Conclusions

65. **Despite the significant progress achieved in the physical aspects of resettlement and recovery, and the implementation of some of the recommendations made by the Lessons Learnt and Reconciliation Commission, the Government of Sri Lanka has yet to satisfy the call made by the Human Rights Council for a credible and independent investigation into the allegations of serious human rights violations that persist or to take the necessary steps to fulfil its legal obligations to ensure justice and redress.**

66. **It is important for the Human Rights Council to recall the magnitude and gravity of the violations alleged to have been committed by the Government and the LTTE, which left many thousands of civilians killed, injured or missing. In its report, the Secretary-General's Panel of Experts concluded that, if proven, some of these acts would amount to war crimes and crimes against humanity. During her visit to Sri Lanka in August 2013, the High Commissioner was struck by the overwhelming sense of grief and trauma among victims and survivors that, if left unaddressed, will continue to undermine confidence in the State and reconciliation.**

67. **The Government has launched initiatives and established mechanisms, such as the military courts of inquiry and the Commission of Inquiry on Disappearances, but none of these have the independence to be effective or to inspire confidence among victims and witnesses. The military courts of inquiry lack independence and transparency and are limited in scope. Past commissions of inquiry have not always completed their mandate, their reports have not been published and their recommendations have not been implemented or followed by prosecutions. The Human Rights Commission of Sri Lanka, although handling many routine cases, has a poor record in responding credibly to serious violations committed by the military and security forces.**[42]

68. **For the past several years, Sri Lankan courts have been compromised by politicization and interference by the executive.**[43] **Cases or presiding magistrates and judges are often transferred from one court to other, thereby delaying judicial**

---

[41] See A/HRC/21/18.

[42] For example, the attack on the Vavuniya prisoners and subsequent custodial deaths, in June 2012; the prison riot and subsequent custodial deaths in Welikada prison, in November 2012; and excessive use of force and subsequent deaths in Weliweriya, in August 2013.

[43] In her oral update to the Human Rights Council (A/HRC/24/CRP.3/Rev.1), the High Commissioner highlighted concerns about the degree to which the rule of law and independence of the judiciary had been undermined in Sri Lanka, notably by the 18th amendment and controversial impeachment of the 43rd Chief Justice in January 2013. The 18th amendment abolished the Constitutional Council, which once recommended appointments to the independent bodies, such as the Elections Commission, the Police Commission and the Human Rights Commission.

proceedings.[44] The High Commissioner heard from lawyers about large numbers of fundamental rights applications, including in cases of arbitrary detention and torture, that are discouraged or not given leave to proceed by the Supreme Court.[45]

69. One consequence of this situation is the understandable reluctance of victims and witnesses to come forward in the absence of any effective system for their protection. In many cases, witnesses have been intimidated to discourage their giving testimony, and even killed. This has been a major constraint on criminal investigations, as well as on the work of previous commissions of inquiry and the Lessons Learnt and Reconciliation Commission. The Attorney-General himself informed the High Commissioner that the reluctance of witnesses to come forward was the main reason for the lack of progress in such emblematic cases as the ones concerning Trincomalee and Action contre la Faim.

70. A bill on assistance and protection for victims of crime has been in preparation since 2007, and was tabled in Parliament in June 2008. The previous drafts contained many provisions that were not compliant with international human rights law. Although the Supreme Court recommended several amendments, it is not clear whether they were incorporated. According to the Government, the legislation is being finalized, even though the final version has yet to be released for public consultation.

71. At the same time, new evidence – including witness testimony, video and photographic material – continues to emerge on the events that took place in the final stages of the armed conflict. Human remains are also still being discovered, for instance in Matale, in November 2012, and Mannar, in December 2013.

72. As the emblematic cases highlighted above show, national mechanisms have consistently failed to establish the truth and achieve justice. The High Commissioner believes this can no longer be explained as a function of time or technical capacity, but that it is fundamentally a question of political will. The Secretary-General's Panel of Experts and the initiatives taken by international non-governmental organizations have shown that witnesses are willing to come forward to testify to international inquiry mechanisms that they trust and can guarantee their protection. For this reason, the High Commissioner remains convinced that an independent, international inquiry would play a positive role in eliciting new information and establishing the truth where domestic inquiry mechanisms have failed. In the absence of a credible national process, she believes the international community has a duty to take further steps, which will advance the right to truth for all in Sri Lanka and create further opportunities for justice, accountability and redress.

73. The High Commissioner reiterates her concern at the continuing trend of attacks on freedom of expression, peaceful assembly and association, particularly against human rights defenders, journalists and families of victims, the rising levels of religious intolerance, and continued militarization, which continue to undermine the environment where accountability and reconciliation can be achieved. She therefore reiterates and updates the recommendations made in her previous report to the Human Rights Council, most of which remain unimplemented.

---

[44] As seen, for example, in the transfer of the magistrate overseeing the case of the Matale mass graves.

[45] For example, the Fundamental Rights application (SCFR115/2011) submitted by the parents of Ganeshan Nimalaruban, who died in custody following the attack on the prisoners in Vavuniya in June 2012.

B. Recommendations

74. **The High Commissioner recommends that the Human Rights Council establish an international inquiry mechanism to further investigate the alleged violations of international human rights and humanitarian law and monitor any domestic accountability processes. OHCHR stands ready to assist in such a process.**

75. **The High Commissioner recommends that the Government of Sri Lanka:**

(a) Finalize laws dealing with incitement to hatred, witness and victim protection, the right to information and the criminalization of enforced disappearances, and revise existing laws in accordance with international standards;

(b) Repeal the Prevention of Terrorism Act and lift the regulations promulgated under it that allow for arbitrary detention;

(c) Arrest, prosecute and punish perpetrators of attacks on minority communities, media and human rights defenders, and ensure protection of victims;

(d) Undertake independent and credible criminal and forensic investigations with international assistance into all alleged violations of human rights and humanitarian law, including recently discovered mass graves;

(e) Establish a truth-seeking mechanism and national reparations policy in accordance with international standards as an integral part of a more comprehensive and inclusive approach to transitional justice;

(f) Broaden the scope and tenure of the Commission of Inquiry on Disappearances to encompass cases from all parts of the island and all periods of the history of disappearances;

(g) Publish the final report of the military courts of inquiry, the presidential commission of inquiry of 2006 and the more recent commissions of inquiry to allow the evidence gathered to be evaluated;

(h) Take further steps in demilitarization, ensure military disengagement from activities that are meant to be civilian, resolve land disputes and promote meaningful community participation in reconstruction and development;

(i) Engage civil society and minority community representatives more fully in an inclusive and consultative process to support the implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission;

(j) Implement the Commission's recommendation for a national day of commemoration, allow all citizens their right to hold individual or group commemorations, and hold national consultations on the design of appropriate memorialization for the victims of the war;

(k) Give positive consideration to the offers of technical assistance made by the Office of the High Commissioner;

(l) Invite special procedures mandate holders with outstanding requests to visit the country in 2014, particularly the Working Group on Enforced or Involuntary Disappearances and the Independent Expert on minority issues.